

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE METROPOLITAN COUNCIL
HOUSING AND REDEVELOPMENT AUTHORITY

In the Matter of Aleksandr and Leyka
Perelman

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

This matter came on for hearing on June 1, 2010, at the Metropolitan Council Housing and Redevelopment Authority (Metro HRA), 390 North Robert Street, St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Mary G. Dobbins, Landrum Dobbins LLC, appeared on behalf of the Metro HRA. Tamara Peters, Emilie Robinson and Jeremiah Parel testified on behalf of Metro HRA. David M. Lawson, Attorney at Law, appeared on behalf of Aleksandr and Leyka Perelman (Respondents). Alek Zilberman, Ronald Bauleke, Asya Zilberman, Inessa Perelman, Yefim "Boris" Perelman, Leyka Perelman and Aleksandr Perelman testified on behalf of Respondents.

STATEMENT OF THE ISSUES

1. Is the Metro HRA's decision to terminate Respondents' Section 8 rental housing assistance due to alleged false information provided to the HRA in order to obtain additional benefits in the form of a higher payment standard and bedroom size exception supported by a preponderance of the evidence?¹

2. Is the Metro HRA entitled to recover the allegedly wrongfully obtained funds using the Revenue Recapture Act, Minnesota Statutes Chapter 270A?²

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

¹ 24 C.F.R. 982.555 (e) (6) and Metro HRA Administrative Plan, p. 16-16, at <http://www.metrocouncil.org/housing/hra/AdminPlan.doc>.

² All citations to Minnesota Statutes are to the 2009 edition.

FINDINGS OF FACT

1. The Metro HRA is the public housing authority that administers the Section 8 Housing Choice Voucher Program in the metropolitan Twin Cities area on behalf of the U.S. Department of Housing and Urban Development.³

2. Respondents currently live in the same two-bedroom apartment in Minnetonka, Minnesota, where they have lived since 1999.⁴

3. Respondents receive a rental subsidy for their apartment through the Metro HRA Section 8 Housing Choice Voucher program.⁵ Respondents have received Section 8 housing assistance since at least 2001.⁶

4. Metro HRA is the Public Housing Authority (PHA), the local entity that oversees the Section 8 program through which Respondents receive their housing assistance.

5. The HRA Administrative Plan governs how Metro HRA administers the housing assistance program. The Administrative Plan is required and approved by the federal Department of Housing and Urban Development (HUD).⁷

6. Recipients of Section 8 Housing Choice Voucher assistance must be recertified annually to maintain eligibility for the program. Recertification includes a review of household composition, income, assets and an inspection of the rental unit where the recipients live. Metro HRA contracts with Carver County Community Development Association (CCCD) to do the annual re-certifications of Carver County residents participating in the Metro HRA section 8 program.⁸

7. At the time of the annual re-certification, participants are required to sign a "Statement of Responsibilities" which states, among other things, that the participants understand the program rules, including the explicit prohibition against commission of fraud in connection with the Section 8 program. Respondents signed a Statement of Responsibilities during their recertification appointment with Ms. Robinson.⁹

8. Housing Choice Vouchers are expressed in terms of bedroom number. Each head of household is eligible for one bedroom, with each additional two people being eligible for one additional bedroom. Thus, a family of two is generally eligible for

³ Testimony of Tamara Peters.

⁴ Test. of Aleksandr Perelman and Leyka Perelman.

⁵ Test. of T. Peters and Emilie Robinson.

⁶ Test. of E. Robinson.

⁷ Test. of T. Peters.

⁸ *Id.*

⁹ Test. of E. Robinson, Hearing Ex. 3. All numbered hearing exhibits were offered Metro HRA; exhibits marked with letters were offered by Respondents.

one bedroom. The program has payment standards that parallel the number of bedrooms expressed in the vouchers.¹⁰

9. The standard for eligibility for a set number of bedrooms can be waived based on a reasonable accommodation needed for a medical reason or for a disability.¹¹

10. Prior to 2005, Respondents were found eligible for a two-bedroom voucher based upon a reasonable accommodation for their medical needs.¹² In 2005, because of major funding cuts, Respondents' voucher was changed to a one-bedroom voucher with a "RAD (reasonable accommodation based on a disability) payment standard" of \$48.00 extra per month to help pay for the cost different between a one-bedroom and a two-bedroom apartment.¹³

11. In 2007, Respondents applied for a two-bedroom voucher but that request was not approved. Instead, the RAD payment standard was continued.¹⁴

12. The basis for the request for the two-bedroom voucher was a number of medical problems suffered by each of the Respondents. In particular, Mr. Perelman's history of gastric and kidney cancer and surgeries in which approximately three-quarters of his stomach and his gall bladder were removed causes him to have to make very frequent trips to the bathroom and to have continuous, uncontrollable attacks of intestinal gas. Musculoskeletal problems contribute to Mr. Perelman's problems falling asleep and staying asleep.¹⁵

13. Mrs. Perelman has a history of bronchial asthma, aortic stenosis, hypertension, vascular disease of the lower extremities, chronic low back and neck pain and degenerative joint disease or osteoarthritis. Her low back and leg pain limit her ability to find a comfortable position and limit her mobility. She also makes frequent trips to the bathroom at night, and must get up and move around because of her chronic pain.¹⁶

14. The Respondents receive daily services from Personal Care Attendants (PCAs) who need the separate bedrooms to provide appropriate services to the Respondents.¹⁷

¹⁰ *Id.*

¹¹ *Id.*

¹² Test. of E. Robinson.

¹³ Test. of E. Robinson and Hearing Ex. 7.

¹⁴ *Id.*

¹⁵ Hearing Ex. 4, Test. of A. Perelman.

¹⁶ *Id.*

¹⁷ *Id.*, Hearing Ex. 8.

15. In addition, the Respondents have an exercise bike and traction equipment in the apartment that they which is prescribed for them and which they use on a regular basis.¹⁸

16. Generally, Housing Choice Vouchers cannot be used to rent an apartment from a relative, but a waiver is permitted as a reasonable accommodation. In the Respondents' case, Metro HRA waived this limitation and the Respondents rent their apartment from their son, Yefim "Boris" Perelman.¹⁹

17. As resources have dwindled and demand has grown for Section 8 housing, HUD has encouraged local PHAs to expand their efforts to eliminate fraud in the program and to serve more families.²⁰

18. In 2009, Metro HRA asked CCCDA to ask its inspectors to play close attention to the "second bedroom" when inspecting apartments where the participants received vouchers or RAD payment standards in order to provide a reasonable accommodation.²¹

19. Mr. Parel has been doing inspections for the CCCDA since 2006. He generally does between eight and thirteen inspections per day, three days per week. He uses a checklist that reflects HUD quality standards to monitor the apartments and insure that they are decent, safe and sanitary. If the apartment does not meet the required standards, he indicates the problem on the checklist, generally verbally informs the tenant or the tenant's representative who is present during the inspection of any problems he finds. Mr. Parel brings the checklist back to the caseworker, who sends a copy to the landlord.²²

20. Mr. Parel inspected the Respondents' apartment on May 13, 2009, filling out the standard HUD checklist. There were no problems indicated on the checklist.²³

21. For the 2009 inspection, the CCCDA had instructed Mr. Parel to pay particular attention to how the bedrooms were being used in the Respondents' apartment and other specific apartments. He was to report whether he observed medical equipment and whether bedrooms were being used for sleeping. He was not told why he was being asked for this information, and he had no idea what the information would be used for.²⁴

22. Mr. Parel had inspected the Respondents' apartment in 2007 and 2008. It seemed the same to him in 2009 as it had in earlier years. After doing the inspection, Mr. Parel left the apartment, went down to his truck, and quickly sketched his recollection of the layout of the apartment, and the furniture in the apartment. He did

¹⁸ Test. of L. Perelman and A. Perelman; Hearing Ex. 8.

¹⁹ Test. of T. Peters and Yefim Perelman.

²⁰ Test. of T. Peters.

²¹ Test. of E. Robinson.

²² Test. of Jeremiah Parel.

²³ Test. of Jeremiah Parel, Hearing Ex. 11.

²⁴ Test. of Jeremiah Parel.

not sketch anything while he was in the apartment and he took no photographs but worked from memory. He provided the sketch to Ms. Robinson at the CCCDA.²⁵

23. Mr. Parel has no training as a draftsman or in drawing. He did not attempt to draw the apartment to scale. He made the sketch shortly after observing the apartment.²⁶

24. Mr. Parel's sketch shows the smaller bedroom with an entertainment center to the right of the doorway, a computer desk and chair in the corner opposite the door, a bookshelf opposite the entertainment center and a closet immediately to the left of the door. There is no couch, bed or coffee table represented in the sketch.²⁷

25. Based solely on Mr. Parel's sketch, the CCCDA and Metro HRA determined that Respondents were not using the second bedroom in their apartment as a bedroom and that their request for a reasonable accommodation that required a second bedroom had been fraudulent. Neither the CCCDA nor Metro HRA conducted a follow-up inspection of the apartment to confirm what Mr. Parel had sketched.²⁸

26. In anticipation of the hearing in this matter, the Respondents retained Ronald Bauleke to do a sketch and architectural drawing of the Respondents' apartment, including the furnishing in the apartment. Mr. Bauleke has 29 years of professional architectural drafting experience. He owns an architectural drafting service as well as a staffing firm that places drafters, architects and engineers in temporary positions.²⁹

27. On April 8, 2010, Mr. Bauleke and a member of his staff went to the Respondents' apartment, did a field sketch while in the apartment and took detailed measurements in the apartment. Mr. Bauleke was told by the Respondents that the location of furniture was important to the dispute in which they were involved. After Mr. Bauleke returned to his office, an employee did an architectural drawing of the apartment and its furnishings based on the field sketch and measurements. Mr. Bauleke reviewed the drawing, which he believes is an accurate representation of the apartment and its furnishings.³⁰

28. Mr. Bauleke compared his company's drawing of the apartment to Mr. Parel's sketch of the apartment and pointed out several discrepancies between the two. Mr. Parel failed to include a closet in the entry to the apartment as well as the laundry closet with a washer and dryer just beyond the entry hall. Mr. Parel's sketch inaccurately represented the location of the doors to both bedrooms and the layout of the master bathroom, including a wall separating the sink from the room in which the

²⁵ Test. of J. Parel, Hearing Ex. 12.

²⁶ Test. of J. Parel.

²⁷ Hearing Ex. 12.

²⁸ Test. of E. Robinson and T. Peters.

²⁹ Test. of Ronald Bauleke; Hearing Ex. C.

³⁰ Test. of R. Bauleke.

commode and shower were located. The master bedroom was missing a closet in Mr. Parel's drawing, and several doors were shown opening the wrong way.³¹

29. Mr. Parel's drawing did not accurately reflect the type or location of the furniture in the living room or the second bedroom. When he was in the apartment on April 8, 2010, Mr. Bauleke observed a sofa bed on the wall opposite the entertainment center with a coffee table in front of it in the second bedroom. His drawing also indicated a humidifier, a plant and a cabinet next to the computer desk and a media shelf just to the left of the door, in front of the closet. None of this furniture was reflected in Mr. Parel's drawing. Mr. Parel's drawing also did not show a traction machine, a side table or a TV stand in the living room, or an exercise bicycle in the dining room, although all were in Mr. Bauleke's drawing.³²

30. Alek Zilberman, the Respondents' nephew, visits Respondents every month or two, generally for family occasions. He is a computer programmer and has spent time in the second bedroom helping Mr. Perelman with his computer, which is on the computer desk in the second bedroom. The sofa bed has been in the second bedroom for many years and Mr. Zilberman has seen it opened and closed.³³

31. Sometime in about 2006-2007, Mr. Zilberman helped Mr. Yefim Perelman carry an exercise bike into the apartment. It took two people to carry it into the apartment.³⁴

32. Asya Zilberman is Mrs. Perelman's sister. She came to the United States in 1994 with her husband. She has visited the Respondents' apartment almost every week since they moved into it. At the time her husband died, on March 26, 2009, she stayed with the Respondents for about two weeks. Mr. Perelman slept on the opened sofa bed in the second bedroom, and Mrs. Perelman slept in the master bedroom. Mrs. Zilberman slept in the living room, on a pull-out sofa.³⁵

33. Mrs. Zilberman has almost always observed the sofa bed in the second bedroom opened for Mr. Perelman to sleep on, because he frequently has to nap during the daytime.³⁶

34. Vanessa Perelman is the Respondents' daughter-in-law. She is married to the Respondents' son, Yefim "Boris" Perelman. She goes to the Respondents' apartment frequently, sometimes as often as twice a week, sometimes just once in two weeks. She helps the Respondents out in a variety of ways, including running errands for them. Since the Respondents moved into their apartment, Vanessa Perelman has been very familiar with their apartment.³⁷

³¹ Test. of R. Bauleke; Hearing Exs. 12, A and B.

³² Hearing Exs. A and 12.

³³ Test. of Alek Zilberman.

³⁴ *Id.*

³⁵ Test. of Asya Zilberman.

³⁶ *Id.*

³⁷ Test. of Vanessa Perelman.

35. Vanessa Perelman has often been in the Respondents' apartment early in the morning to help out with something on her way to work; or late at night to respond to a particular need for help. She has seen Mr. Perelman asleep in the second bedroom on the opened sofa bed many times.³⁸

36. Generally, if the Respondents are expecting company, they close the sofa bed. The Respondents close the sofa bed if there is going to be a party, like a birthday party for family. Vanessa Perelman specifically remembers seeing the sofa bed in the second bedroom on May 10, 2009, when they had a Mothers' Day celebration at the Respondents' apartment.³⁹

37. Yefim "Boris" Perelman is the Respondents' son and the owner of the apartment where the Respondents live. He frequently stops in at the Respondents' apartment unannounced to see how they are doing. Generally, the sofa bed in the second bedroom is left opened. The furniture in that bedroom has not changed since May of 2009.⁴⁰

38. The family sometimes sits or lies on the sofa bed in the second bedroom to watch television, especially Russian movies on DVD. The sofa bed is not that comfortable to sit on, but it is the only place to sit. They do not sit on the floor.⁴¹

39. When company is coming, the Respondents like the apartment to look its best, so they close the sofa bed.⁴²

40. Respondent Aleksandr Perelman keeps his clothes, pictures, books and photographs in the second bedroom. It is "his own world" in that room.⁴³

41. Respondent Aleksandr Perelman uses the second bedroom in the Respondents' apartment exclusively as his own bedroom. His severe stomach and back problems require him to sleep in a room separate from his wife.⁴⁴

42. Because of Respondent Aleksandr Perelman's problems with digestion, gas and incontinence that are result of his stomach and kidney cancer surgeries, it is especially important for him to also have a separate bathroom.⁴⁵

43. Respondent Leyka Perelman has been sleeping in a separate bedroom from her husband for medical reasons since 1999 when they moved into their current

³⁸ *Id.*

³⁹ Test. of Asya Zilberman and V. Perelman.

⁴⁰ Test. of Y. Perelman.

⁴¹ Test. of Y. Perelman and Asya Zilberman.

⁴² Test. of Y. Perelman, A. Perelman.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

apartment. She uses the exercise bike and a traction machine regularly to help with a number of problems involving herniated vertebrae, arthritis and heart problems.⁴⁶

44. In 1999, when the Respondents were moving into their current apartment, they purchased two sofa beds, a love seat and an arm chair. They were purchased at a store that sells furniture manufactured for Russian speakers. The furniture uses springs, which makes it easier to get up from them. They can also come apart and be unfolded.⁴⁷

45. One of the sofa beds went into the second bedroom. That is the sofa bed Respondent continues to use to this day. The other sofa bed, and the love seat were donated to the Salvation Army in 2006 when the Respondents changed their living room furniture.⁴⁸

46. On January 20, 2010, Metro HRA sent Respondents a Termination of Assistance letter citing alleged collaboration with “Vicro Home Care [Respondents’ PCA Agency] to submit false documentation of disability on your behalf in order to obtain a higher payment standard and bedroom size exception.”⁴⁹

47. Despite the wording of this Notice, Metro HRA clarified at the hearing that they are not challenging the accuracy of any medical information provided by the Respondents. The only issue raised by Metro HRA at the time of the hearing, and the only issue it addressed at the hearing was whether Respondents were actually using the second bedroom in their apartment as a bedroom.⁵⁰

48. The Termination of Assistance letter also stated “[d]ue to the fraud committed the Metro HRA will seek to recover all assistance paid on your behalf.” The letter was accompanied by a Request for Repayment and a Repayment Agreement indicating the Respondents owed Metro HRA \$17,260 and requesting a monthly repayment amount of \$480.00.⁵¹

49. The Respondents appealed the termination of assistance and the request for repayment and Metro HRA issued its Notice of Hearing in this matter on April 14, 2010.⁵²

Based on these Findings of Fact, the Administrative Law Judge makes the following:

⁴⁶ Testimony of L. Perelman

⁴⁷ Hearing Ex. D.

⁴⁸ Testimony of A. Perelman.

⁴⁹ Hearing Ex. 1.

⁵⁰ Testimony of T. Peters.

⁵¹ Hearing Ex. 1.

⁵² Nothing in the record establishes when and how the Respondents appealed. The Administrative Law Judge assumes a timely appeal was made based on the Notice of Hearing issued by Metro HRA.

CONCLUSIONS

1. The Administrative Law Judge has the authority to consider the charges against the Respondent pursuant to Minn. Stat. §§ 14.50, 270A.08, and 270A.09 (2009); and 24 C.F.R. 982.555 and the Metro HRA Administrative Plan.

2. The Metro HRA has complied with all relevant procedural requirements and has given proper notice of the hearing.

3. Metro HRA has authority to terminate the assistance and to collect improperly paid assistance of a program participant who provides false information or engages in fraud to obtain benefits or additional benefits.⁵³

4. To terminate the assistance and collect improperly paid assistance of a program participant, Metro HRA must prove by a preponderance of the evidence that the participants provided false information or engaged in fraud to obtain benefits under the program.⁵⁴

5. Metro HRA failed to demonstrate by a preponderance of the evidence that Respondents are not using the second bedroom in their apartment as a bedroom.

6. Metro HRA failed to demonstrate by a preponderance of the evidence that Respondents' Section 8 housing assistance should be terminated.

7. The Metro HRA is not entitled to rights and remedies against the Respondents for recovery of overpayments and termination of the Respondents from participation in the Section 8 housing assistance program.⁵⁵

Based upon these Conclusions, the Administrative Law Judge makes the following:

ORDER

Metro HRA's termination of Respondents from its Rental Assistance Program is REVERSED and the request for repayment of \$17,260.00 is RESCINDED. Metro HRA is not authorized to recover amounts paid to Respondents between 2007-2009 pursuant to Minnesota Statutes Chapter 270A.

Dated: June 29, 2010

s/Raymond R. Krause
RAYMOND R. KRAUSE
Administrative Law Judge

Digitally Recorded: No transcript prepared

⁵³ 24 C.F.R. 982.551(b) and 24 C.F.R. 981.552.

⁵⁴ 24 C.F.R. 982.555(e)(6).

⁵⁵ 24 C.F.R. § 982.453 (b).

NOTICE

This report constitutes the final decision and order in this matter, subject to the provisions for judicial review under Minnesota Statutes Sections 14.63 to 14.68.

MEMORANDUM

In order to prevail in this proceeding, Metro HRA had to demonstrate by a preponderance of the evidence that Respondents were not using the second bedroom in their apartment as a bedroom consistent with the medical recommendations Respondents presented to Metro HRA when they applied for the second-bedroom voucher. The only piece of evidence Metro HRA presented to support its position in this matter was a sketch made by Mr. Parel, a housing inspector who did not know why he was asked to observe how Respondents were using their second bedroom. Mr. Parel was not trained to make drawings or sketches of what he saw; and he chose to make his sketch shortly after leaving the apartment rather than contemporaneously while observing it, so that he was sketching entirely from memory. Mr. Parel could easily have sketched the furnishings in the apartment while he was observing them, or he could have taken a photograph. He did neither. Metro HRA did not re-visit the apartment to confirm Mr. Parel's observations.

Respondents' witnesses, while admitting bias to some extent, spoke credibly and consistently about all material aspects of this case. Several of the witnesses, including Mrs. Zilberman and Yefim "Boris" Perelman, testified not only that they have seen the sofa bed in the second bedroom, but that they have seen Respondent Aleksandr Perelman asleep on the opened bed. Their testimony was supported by the letter from Vico Home Care, included in Metro HRA's exhibits. The letter, apparently written in June 2007, explicitly says that the Respondents were "sleeping in separate bedrooms." Respondents also introduced into evidence the receipt for furniture purchased by Respondents at the time they moved into the apartment. That receipt supports their contention that they purchased a second sofa bed for Respondent Aleksandr Perelman's use in the second bedroom. The preponderance of the evidence supports the Respondents' contention that they do use the second bedroom as a bedroom.

Metro HRA's actions in terminating the Respondents' rental assistance and attempting to obtain repayment of the assistance they have been paid over the past three years would have severe consequences for the Respondents. Metro HRA cannot rely solely on a hastily drawn sketch based on the memory of an inspector who did not know what he was looking for to meet the burden of proof.

R.R.K.